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Khairul Fadzli bin Khairudin v Hasan As'ri bin Jamaludin & Anor

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HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12B-35-02 OF 2013
WONG TECK MENG JC
24 OCTOBER 2014

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Damages (Personal Injury or Death) — Personal injuries — Motor vehicle accident — Award of RM80,000 for head injury — Failure of sessions court judge to refer to medical reports or case law authorities — Award flawed and without legal basis — Award substituted to RM120,000

D

Evidence — Presumption — Adverse inference — Motor vehicle accident — Failure to call pillion rider to give evidence — Conflicting versions of accident given — Whether adverse inference should be drawn for failing to call pillion rider

E

Tort — Negligence — Road accident — Appeal against decision of sessions court judge — Apportionment of liability — Whether fair — Appellant claiming that second respondent's motorcycle suddenly executed a U turn without signaling — Whether apportionment of liability at 50:50 fair — Appellant's evidence corroborated — Appellant not in a position of avoiding situation created by second respondent — Second respondent's version not probable – Liability reapportioned at 70:30 — Road accident — Police report — Whether omissions of material facts in police report when a critical consideration evaluating the evidence

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An accident occurred between the motorcycles ridden by the appellant ('plaintiff') and the second respondent ('second defendant'). The appellant's version of the accident was that while was riding his motorcycle, the second respondent's motorcycle which was ahead of the appellant suddenly executed a U-turn. The appellant was unable to avoid the second respondent's motorcycle and as a result the collision occurred. The appellant's version was corroborated by SP2, a friend of the appellant who was also travelling together in the same direction on another motorcycle at the material time. Both SP2 and the appellant testified that the second respondent did not give any right hand side light signal to indicate that he was making a U-turn. Both SP2 and SP3 made their police reports respectively. The second respondent claimed that he was turning to the right side of the road and his motorcycle was already on the centre of the road when the appellant's motorcycle collided into him. The second respondent denied he was making a sudden U-turn. The second

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respondent claimed that he had given the right signal before making the right turn. The learned sessions court judge ('the SCJ') concluded that the second respondent was negligent for entering into the right side of the road before he reached the right lane junction on the right side of the road and that the appellant was riding too fast. Liability was thus apportioned 50:50. As for the appellant's head injury, the SCJ awarded RM80,000 without any reference to the medical reports or case law authorities. The appellant appealed against the SCJ's decision.

Held, allowing the appeal:

(1) From the finding of facts based on the evidence, the apportionment of liability could not be 50:50. After having concluded that the second respondent had turned to the right and not being able to make a finding whether the second respondent did give a right hand signal, it was clear that the proximate cause of the collision was the second respondent. The appellant was not in a position of avoiding the situation created by the second respondent and was not the actual cause of it. Hence, the apportionment of 50:50 liability was erroneous in law and in fact (see para 13).

(2) By looking at the sketch plan objectively and in particular the scratch marks on the road and the versions of both parties, the accident most probably happened on the left side of the road very near to the centre white line or on the middle of it. Looking at the silent evidence on the sketch plan, the collision could not have happened on the right side of the road. Further, the version of the appellant that the second respondent made a sudden U-turn was corroborated by SP2. SP2 and the appellant were consistent in their testimonies that the second respondent made a U-turn and not a right turn. Their police reports were consistent with their version of the accident. The second respondent's version was not probable based on the facts (see paras 14 & 17).

(3) The second respondent did not mention the speed of the appellant's motorcycle in his police report, yet he testified that the appellant was speeding on his motorcycle. It is trite law, that omissions in a police report with regards to material facts involving a motor vehicle accident is a critical consideration in evaluating the evidence of the maker of the report who gives evidence in court which are not reported in his police report ; *Abdul Kadir bin Mohammad v Kamarulzaman bin Mohd Zin & Anor* (refered) (see para 18).

(4) There was a pillion rider on the second respondent's motorcycle at the material time but was not called to give evidence for the respondents. Hence, adverse inference should be drawn against the respondents for failing to get the pillion rider to testify (see para 18).

(5) In view of the fact that the appellant was riding his motorcycle close to the middle of the road when he should be on the left side of the road and having being aware that the second respondent's motorcycle was in front of him, the appellant had contributed to the negligence. If he had kept a safe distance from the second respondent's motorcycle, the accident could be avoided. Hence, liability was to be apportioned at 70% negligence against the second respondent and 30% against the appellant (see para 20).

(6) The appellant suffered from serious head injury where his right parietal bone was fractured with acute subdural haemorrhage and pneumocranium. A cranietomy was carried out. He developed 'hemiparesis' ie paralysis of half the body. He was in a bad state and was having a poor Glasgow Coma Scale reading on his initial admission into the Penang General Hospital. As the SCJ did not substantiate his award for RM80,000 for the head injury, the award was flawed and without legal basis. He had also made a wholly erroneous estimate of the damage suffered. Hence, the award was substituted to RM120,000 (see paras 23 & 29).

[Bahasa Malaysia summary

Satu kemalangan telah berlaku antara motorsikal-motorsikal yang ditunggang oleh perayu ('plaintif') dan responden kedua ('defendan kedua'). Versi perayu berhubung kemalangan itu adalah semasa menunggang motorsikalnya, motorsikal responden kedua yang di hadapan perayu tiba-tiba membuat pusingan U. Perayu tidak dapat mengelak motorsikal responden kedua dan akibat daripada itu perlanggaran berlaku. Versi perayu telah disokong oleh SP2, kawan kepada perayu yang juga menunggang bersama dalam arah sama atas motorsikal lain pada masa matan. Kedua-dua SP2 dan perayu memberi keterangan bahawa responden kedua tidak memberikan apa-apa isyarat lampu sebelah kanan untuk menunjukkan dia hendak membuat pusingan U. Kedua-dua SP2 dan SP3 telah membuat laporan polis mereka masing-masing. Responden kedua mendakwa bahawa dia sedang membelok ke sebelah kanan jalan dan motorsikalnya telahpun berada di tengah jalan apabila motorsikal perayu melanggarnya. Responden kedua menafikan yang dia tiba-tiba telah membuat pusingan U. Responden kedua mendakwa bahawa dia telah memberi isyarat ke kanan sebelum membelok ke kanan. Hakim bijaksana mahkamah sesyen ('HMS') membuat kesimpulan bahawa responden kedua telah cuai kerana masuk ke sebelah kanan jalan sebelum dia sampai ke laluan simpang kanan jalan dan perayu menunggang terlalu laju. Liabiliti dengan itu dibahagikan 50:50. Berhubung kecederaan kepada perayu, HMS mengawardkan RM80,000 tanpa apa-apa rujukan kepada laporan perubatan atau autoriti kes undang-undang. Perayu merayu terhadap keputusan HMS.

Diputuskan, membenarkan rayuan:

(1) Daripada penemuan fakta berdasarkan keterangan, pembahagian liabiliti tidak boleh 50:50. Setelah membuat kesimpulan bahawa responden kedua telah pusing ke kanan dan tidak dapat membuat penemuan sama ada responden kedua memang telah memberikan isyarat ke kanan, adalah jelas bahawa sebab perlanggaran paling hamper adalah responden kedua. Perayu bukan dalam kedudukan untuk mengelak keadaan yang ditimbulkan oleh responden kedua dan bukan sebab sebenarnya. Justeru, pembahagian liabiliti 50:50 adalah salah dari segi undang-undang dan fakta (lihat perenggan 13).

(2) Berdasarkan pelan lakaran secara objektif dan khususnya kesan calar pada jalan dan versi kedua-dua pihak, kemalangan itu kebarangkalian besar berlaku di sebelah kiri jalan berdekatan dengan tengah garisan putih atau di atas tengah garis putih itu. Berdasarkan keterangan atas pelan lakaran itu, perlanggaran itu tidak mungkin berlaku di sebelah kanan jalan. Selanjutnya, versi perayu bahawa responden kedua telah membuat pusingan U secara tiba-tiba telah disokong oleh SP2. SP2 dan perayu adalah konsisten dalam keterangan mereka bahawa responden pertam telah membuat pusingan U dan bukan membelok ke kanan. Laporan-laporan polis mereka adalah konsisten dengan versi kemalangan itu. Versi responden kedua tidak berkemungkinan berdasarkan fakta (lihat perenggan 14 & 17).

(3) Responden kedua tidak menyatakan kelajuan motorsikal perayu dalam laporan polisnya, namun dia memberi keterangan bahawa perayu menunggang laju motorsikalnya. Adalah undang-undang lapuk, bahawa peninggalan dalam laporan polis berkenaan fakta penting melibatkan kemalangan kenderaan motor memerlukan pertimbangan kritikal dalam menilai keterangan pembuat laporan yang memberi keterangan di mahkamah yang tidak dilaporkan dalam laporan polisnya; *Abdul Kadir bin Mohammad v Kamarulzaman bin Mohd Zin & Anor* dirujuk (lihat perenggan 18).

(4) Terdapat pembonceng atas motorsikal responden kedua pada masa matan tetapi tidak dipanggil untuk memberi keterangan bagi responden-responden. Justeru, inferens bertentangan patut dibuat terhadap responden-responden kerana gagal mendapatkan pembonceng itu untuk memberi keterangan (lihat perenggan 18).

(5) Berdasarkan fakta bahawa perayu sedang menunggang motorsikalnya dekat dengan tengah jalan walhal dia patut berada di sebelah kiri jalan dan sedar bahawa motorsikal responden kedua berada di hadapannya, perayu telah menyumbang kepada kecuaian. Jika dia berada dalam jarak yang selamat daripada motorsikal responden kedua, kemalangan itu mungkin boleh dielakkan. Justeru, liabiliti hendaklah dibahagikan 70% kecuaian terhadap responden kedua dan 30% terhadap perayu (lihat perenggan 20).

(6) Perayu mengalami kecederaan kepala yang serius di mana tulang parietal kanannya patah dengan pendarahan subdural dan pneumocranium yang teruk. Satu cranietomy telah dijalankan. Dia telah mengalami 'hemiparesis' iaitu lumpuh sebelah badan. Dia dalam keadaan tidak baik dan mengalami bacaan skala koma Glasgow semasa mula dimasukkan ke Hospital Besar Pulau Pinang. Oleh kerana HMS tidak meyokong award beliau sejumlah RM80,000 kerana kecederaan kepala, award itu cacat dan tanpa asas undang-undang. Beliau juga telah membuat anggaran salah terhadap ganti rugi yang dialami. Justeru, award tersebut telah digantikan kepada RM120,000 (lihat perenggan 23 & 29).]]]]]

Notes

For cases on personal injuries in general, see 6 *Mallal's Digest* (4th Ed, 2014 Reissue) paras 617–1004.

For cases on adverse inference, see 7(2) *Mallal's Digest* (5th Ed, 2015) paras 2594–2597.

For cases on road accident, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1601–1900.

Cases referred to

Abdul Kadir bin Mohammad v Kamarulzaman bin Mohd Zin & Anor [2001] 1 AMR 599, SC (refd)

Andi Firdau b Yusmar v Mohd Khir Muda [2009] 1 PIR 46 (refd)

Baharuddin bin Sulung E & Anor v Hiew Chong Choo [2008] 1 PIR 40 (refd)

Chu Kim Sing & Anor v Abd Razak bin Amin [1999] 6 MLJ 433; [1999] 4 AMR 4198, HC (refd)

Ibrahim B Mohd Amin & Anor v Paramasivan a/l Peruman [2011] 1 PIR 4 (refd)

Julisa b Wahid v Abdullah b Idros [2009] 1 PIR 50 (refd)

Mahmod bin Kailan v Goh Seng Choon & Anor [1976] 2 MLJ 239, FC (refd)

Mohd Azmi bin Suib & 2 Ors v Mohamad Safpulizan [2009] 1 PIR 17 (refd)

Muhammad Hamzi B Omar v Jemilah B Ahmad [2013] 1 PIR 52 (refd)

Muhammad Iqmal Daniel B Abdullah v Tan Choon Chwa & Anor [2012] 1 PIR 8 (refd)

Prabu a/l Kalaiselvan v Tan Kim Beng & Anor [2012] 1 PIR 30 (refd)

Yahaya bin Mohamad v Chin Tuan Nam [1975] 2 MLJ 117, PC (refd)

Joshua Narendran a/l Sundaramutty (Ajmer, Sandhu & Ong) for the appellant.
Farrah Dina bt Alodin (Murali & Assoc) for the respondent.

Wong Teck Meng JC:

INTRODUCTION

[1] This is an appeal against my decision allowing the appeal of the plaintiff against the decision of the sessions court which decided on a 50:50 liability between the plaintiff and defendants in motor accident negligence claim and awarded a quantum of RM80,000 for head injury. I had adjudged that the liability should be 30 (against plaintiff): 70 (against defendants) and that quantum of the head injury should be increased to RM120,000.

[2] When hearing this appeal I am minded of the constant reminder that as an appellate court hearing an appeal from the subordinate court where the trial was held, I should be slow to interfere with the decision made by the lower court on the issue of liability made by the lower court which was based on its evaluation of the evidence of the witnesses. The said guideline is pronounced in the case of *Yahaya bin Mohamad v Chin Tuan Nam* [1975] 2 MLJ 117, Privy Council which held at:

> [2] This was not one of those rare cases where an appellate court, lacking the advantage of seeing and hearing the witnesses, was justified in coming to a different conclusion from the trial judge on the question of creditability. There was no reason to think that the trial judge had not taken proper advantage of his having seen and heard the witnesses.

[3] I am also minded of the principle laid down in *Mahmod bin Kailan v Goh Seng Choon & Anor* [1976] 2 MLJ 239 FC where it held '[1] the appellate court can only interfere with the award of damages by the trial court if it is shown that the trial judge has acted on a wrong principle of law or that he has misapprehended the facts or he has made a wholly erroneous estimate of the damage suffered.' when the issue of quantum is challenged on appeal. It is only in a situation whether on the ground of excess or insufficiency of the damage awarded that the appellate court will interfere in the interest of justice.

EVIDENCE

[4] The appellant ('the plaintiff') was riding a motorcycle ABF 3082 and the second respondent ('the second defendant') was riding a motorcycle PHE 7660 when the accident occurred. The direction of travel of both motorcycle was from the bottom of the sketch plan P1 towards the top.

[5] According to the assistant investigating officer Sargeant Rohalim ('SP1'), his investigations revealed that the motorcycle was turning to the right or making a U-turn but he was not sure. SP1 testified that the damage to the

motorcycle ABF 3082 was in the front whereas that of PHE 7660 was more on the right.

[6] The appellant's version of the accident is that while he (SP3) was riding his motorcycle ABF 3082 from the bottom to the top of P1 ie from Kepala Batas to Tasek Gelugor, the second respondent's motorcycle which was ahead of the plaintiff's suddenly executed a U-turn. As a result SP3 was unable to avoid the second defendant's motorcycle and as a result the collision occurred.

[7] The version of the appellant was corroborated by SP2, a friend of the appellant who was also travelling together in the same direction on another motorcycle at the material time. SP2 saw how the accident happened ie the second respondent made a sudden U-turn. Both SP2 and SP3 testified that the second respondent did not give any right hand side light signal to indicate that he was making a U-turn. Both SP2 and SP3 made their police reports P3 and P9 respectively.

[8] The version of second respondent ('SD1') is that he was turning to the right side of the road when his motorcycle PHE 7660 which was already on the centre of the road with the appellant's motorcycle collided into him. The second respondent denied he making a sudden U-turn when the collision occurred. SD1 testified that his motorcycle was hit on the right side. SD1 said that he did give the right signal before making the right turn.

[9] As to the point of collision, SP3 indicated on P1 that it was Q, whereas SD1 indicated it was a K which is on the right side of the road.

[10] The learned session court judge opined that the collision happened at point K on P1 and concluded that the second respondent was negligent for entering into the right side of the road before he reached the right lane junction on the right side of the road. Then the judge opined that the appellant was riding too fast by referring to the photographs tendered by SP1 on the damage to the vehicles.

[11] Hence, the sessions concluded that if the appellant had ridden at 40km/h the appellant could have avoided colliding into the second respondent's motorcycle which was already on the right lane of the road. The finding of the court based on the above consideration of the evidence was that the liability be apportioned 50:50.

[12] On the quantum pertaining to the head injury the sessions court judge made an award for RM80,000 without any reference to the medical reports or case law authorities. His reasons for awarding that amount was based on the age factor and background of the appellant. That's all.

FINDINGS

[13] Even based at a glance of the session's court decision, from his finding of facts based on the evidence that he enumerated, the apportionment of liability cannot be 50:50. After having concluded that it the second respondent had turned to the right and not being able to make a finding whether the second respondent did give a right hand signal, it is crystal clear that the proximate cause of the collision was the second respondent. The appellant was not in a position of avoiding the situation created by the second respondent and not the actual cause of it. Hence, the apportionment of 50:50 liability is erroneous in law and in fact.

[14] By looking at P1 objectively and in particular the scratch marks f and g on the road and the versions of both parties, it is my finding that the accident most probably happened on the left side of the road very near to the centre white line or on the middle of it. My opinion is based on the beginning of the scratch mark F which is on the left side of the road close to the centre white line.

[15] These scratch marks are made after both vehicles had collided fell and slided on the road before they finally stopped. The scratch mark F was most likely from the second respondent's motorcycle and that of scratch mark G was from the appellant's motorcycle. SP2 had given evidence on the likely position of the two vehicles after the collision.

[16] Therefore looking at the silent evidence on P1, the collision could not have happened at K on the right side of the road. My view is that the collision occurred at a spot between Q and K which is still on the left side of the road, that is just before the beginning of scratch mark F. The next critical issue that was not considered by the sessions court is which of the two versions of the accident is more probable.

[17] In the first place, the version of the appellant that the second respondent made a sudden U-turn was corroborated by SP2. SP2 and SP3 were consistent in their testimonies that the second respondent made a U-turn and not a right turn. Their police reports were consistent with their version of the accident.

[18] The version of the second respondent was that he was turning right to enter into a lane (*lorong*) on the right side of the road and was not making a U-turn. He said he had given signal before turning right. Having considered the evidence of SD1 carefully, I find that his evidence on the version of the accident is not probable on the following reasons:

(a) SD1 had agreed in cross-examination that the point of collision

suggested by him at K is far away from the lane (*lorong*) on the right. Hence, there was no reason for SD1 to move and turn to the right so early;

(b) in SD1's police report, he had stated that he was going to Kampung Pelet at the material time. However, it is an undisputed fact that Kampung Pelet is way below in the sketch plain P1 and not to the right lane (*lorong*) as alleged by the second respondent. Although SD1 said in re-examination that he was going to his friend's house which was situated on the right lane (*lorong*), this material fact was never stated in his police report which is a glaring omission. In fact in the police report, SD1 had unequivocally stated that he was going to Kampung Pelet and nowhere else;

(c) the second respondent did not mention the speed of the appellant's motorcycle in his police report, yet he testified that the appellant was speeding on his motorcycle. It is trite law, that omissions in a police report with regards to material facts involving a motor vehicle accident is a critical consideration in evaluating the evidence of the maker of the report who gives evidence in court which are not reported in his police report. (See *Abdul Kadir bin Mohammad v Kamarulzaman bin Mohd Zin & Anor* [2001] 1 AMR 599); and

(d) there was a pillion rider on the second respondent's motorcycle at the material time but was not called to give evidence for the respondents. Hence, adverse inference should be drawn against the respondents for failing to get the pillion rider to testify.

[19] Therefore, based on the above observations, the version of the appellant is more probable ie the second respondent made a U-turn instead of a right turn. It was a U-turn because the second respondent was attempting to turn back to Kampung Pelet. The accident was solely caused by the negligence of the second respondent who is responsible for the collision. Even if the second respondent had given the right light signal, he did not at all observe whether it was safe to turn right or made a U-turn by looking towards his back to ensure that there was no vehicle travelling towards him on the right from behind.

[20] However, in view of the fact that the appellant was riding his motorcycle close to the middle of the road when he should be on the left side of the road and having being aware that the second respondent's motorcycle was in front of him, the appellant had contributed to the negligence. If he had kept a safe distance from the second respondent's motorcycle, the accident could be avoided.

[21] With my finding, I therefore reversed the decision of the sessions court on the issue of liability and substituted it with a 70% negligence against the

second respondent and 30% contributory negligence against the appellant.

[22] On quantum, the following medical reports:

(a) Hospital Pulau Pinang medical report dated 25 October 2010;

(b) Hospital Bukit Mertajam medical report dated 2 November 2010;

(c) Neuro specialist report from Island Hospital dated 9 February 2011; and

(d) Neuro specialist report from Gleneagles Medical Centre dated 5 October 2011.

were considered by me in arriving at the right amount.

[23] It is not disputed that the appellant suffered from serious head injury where his right parietal bone was fractured with acute subdural haemorrhage and pneumocranium. A cranietomy was carried out. He developed 'hemiparesis' ie paralysis of half the body. He was in a bad state and was having a poor glasgow coma scale reading on his initial admission into the Penang General Hospital.

[24] As for the appellant's post operation residuals, Island Hospital report confirms the following:

(a) has difficulty remembering check lists and work activities;

(b) walks slow up and down stairs;

(c) feels tired fast, is withdrawn and depressed;

(d) cannot do simple calculations;

(e) suffers loss of lower sensation in the left hand as a result of the hemiparesis;

(f) cannot jump on his left leg;

(g) cannot use his left fingers for finger movement;

(h) MRI shows serious brain injury (brain scarring) which cannot be reversed; and

(i) plaintiff now suffers from :

  (i) left hemianaesthesia ('numbness of the left upper and lower limbs including left side of torso, face and neck.')

  (ii) weakness of the left upper limb and left lower limb.

  (iii) has post concessional syndrome with episodic headaches and subjective poor memory.

[25] The Gleneagles Medical Centre report confirms :

(a) that the plaintiff has suffered severe head injury;

(b) has sensory impairment to touch, temperature and pain over the left side of the body;

(c) has mild impairment of memory;

(d) has subjective symptoms of post concussion syndrome consisting of episodic headache; and

(e) has weakness of the left wrist and left finger movements. He has weakness of the left knee flexion and dorsiflexion of the left ankle.

[26] The respondents submitted the cases of *Muhammad Hamzi B Omar v Jemilah B Ahmad* [2013] 1 PIR 52, *Muhammad Iqmal Daniel B Abdullah & Anor v Tan Choon Chwa & Anor* [2012] 1 PIR 8 and *Prabu a/l Kalaiselvan v Tan Kim Beng & Anor* [2012] 1 PIR 30.

(a) In *Muhammad Hamzi's* case, RM50,000 was awarded for moderately severe head injury – right parietal haematoma, right parietal bone fracture, right temporo-parietal extradural hematoma with impending coning, temporo-parietal subdural harmorrahage with mild cerebral odema-plaintiff as a result suffers from cognitive impairment (mild impairment of short term recall and concentration and somatic impairment (headaches adnd giddiness)

(b) In *Muhammad Iqmal Daniel's* case, RM65,000 was awarded for moderately severe head injury with intra cranial bleeding of extradural, subdural, intraparentchymal and subarachnoid haermorrhage, fracture of right frontal region and diffuse axonal injury – plaintiff as a result suffer from mildly impaired memory and needs assistance in some of the daily living activities like buttoning shirts and studying.

(c) In *Prabu a/l Kalaiselvan*'s case RM55,000 was awarded for severe head injury with skull fracture of the left frontal and right orbital wall and intracranial bleeding of subdural types.

[27] The appellant on the other had quoted cases where higher awards were given for comparable injury to the brain with residuals.

(a) In *Ibrahim B Mohd Amin & Anor v Paramasivan a/l Peruman* [2011] 1 PIR 4, RM130,000 was awarded for cerebral odema and severe head injuries in 2009.

(b) In *Andi Firdau b Yusmar v Mohd Khir Muda* [2009] 1 PIR 46 a global sum of RM125,000 was awarded for severe head injury with the diffuse

axonal injury grade II with disabilities, cerebral concussion as well as facial lacerations.

(c) In *Julisa b Wahid v Abdullah b Idros* [2009] 1 PIR 50 RM150,000 was awarded for severe head injury with skull fracture and diffuse axonal injury.

(d) In *Baharuddin bin Sulung E & Anor v Hiew Chong Choo* [2008] 1 PIR 40 RM100,000 was awarded for brain injury causing impaired attention span, impaired recent recall and constructional ability.

(e) In *Mohd Azmi bin Suib & 2 Ors v Mohamad Safpulizan* [2009] 1 PIR 17 RM100,000 was awarded for moderately severe traumatic brain injury which has impaired the plaintiff's ability to concentrate and stay focused and therefore affecting his learning abilities.

[28] Having listed out the disabilities suffered by the appellant arising from his severe head injury which includes left hemiparesis and his only ability now is to run a burger stall together with his friend, and comparing the comparable awards given in the above quoted cases, the appellant's case comes close to the cases quoted by the appellant especially the cases of *Baharuddin bin Sulung* and *Mohd Azmin bin Suib*. The cases quoted by the respondents carry awards for not so serious injuries and residuals as compared to the present case here. For example in *Muhammad Hamzi* and *Muhammad Iqmal Daniel* cases the awards there were for moderately severe head injury, unlike the severe head injury in the present case.

[29] Hence, as the sessions court judge did not substantiate his award for RM80,000 for the head injury, the award is flawed and without legal basis. He had also made a wholly erroneous estimate of the damage suffered.

[30] In the event, I have the right as an appellate judge to set aside the said quantum and substituted it with RM120,000 which is a fair and reasonable figure (including the element of inflation) for the injury and residuals suffered by the appellant. This is also in consonant with the call made in *Chu Kim Sing & Anor v Abd Razak b Amin* [1999] 6 MLJ 433; [1999] 4 AMR 4198 to courts not to be too stingy in their awards on quantum. Its ruling is worth reproducing here.

> The time has come for the courts to be magnanimous in its awards for running down cases. Old comparables must continue to be used but the quantums must rise and be commensurate with the times. The weak Malaysian ringgit and the ever increasing cost of living serve as useful guidelines to increase awards to the litigants in running down cases. In the past, lost of life and limb as a result of a road accident receive minimal attention by the courts and the quantums have all along been minimal. This must change. The winds of change are here to stay. Battered and

injured limbs arising out of accidents can only be redressed by way of monetary compensation.

Appeal allowed.

Reported by Kanesh Sundrum